Frequently Asked Questions Concerning Practice & Procedure in Cases Assigned to Judge Grant

Lawyers and pro se litigants often call chambers to ask questions concerning how particular things should be done. The purpose of this portion of the court's website is to provide convenient and readily available answers to frequently asked questions concerning the practice in cases assigned to Judge Grant. The answers given here apply only to the cases assigned to him; the other judges of the district may follow a different procedure.

Many of the most frequently asked questions can be answered through a review of the court's local rules, and this portion of the web site makes no attempt to provide answers that can be found there. Counsel and pro se litigants should always consult the local rules to find answers to their procedural questions before contacting the court's staff.

FAQs are always a work in progress as procedures evolve and change whether because of changes in the law, the rules of procedure, or technology. If you think that the procedures described here have become out of date, or no longer accurately reflect the procedure in cases assigned to Judge Grant, please feel free to bring that to the attention of his chambers' staff. Also, if there are questions you think have been overlooked and should be addressed here, please feel free to bring that to their attention as well.

The most frequently asked questions are as follows:

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1. Do I need to attend a scheduled proceeding?

A court's most fundamental expectations of the attorneys who appear before it are to show up and be prepared. Accordingly, attorneys and pro se litigants are expected to appear for proceedings which are scheduled to consider things they have filed. If the parties have reached a settlement or some other concrete understanding as to what should be done with the matter in question it may be appropriate to have one attorney appear and make a report to the court on behalf of all concerned.

2. May I call in for a particular hearing?

Telephonic participation is not available for matters scheduled to be heard in Lafayette,

Indiana. It is only available in Fort Wayne.

Although the most common and useful method of participating in a scheduled matter is to physically appear, the court recognizes that this may not always be convenient and some attorneys are not interested in associating with local counsel who could appear on their behalf. In some instances, it may be possible to participate in a scheduled hearing or pre-trial conference by phone, although the court regards this as a convenience and a courtesy extended to the bar; not the normal order of business. Whether or not such participation will be permitted depends upon things such as the nature of the proceeding and the issues involved, how it has been scheduled, and the number of participants. Proceedings which are suitable for telephonic participation generally require the matter to be scheduled by itself, not simply as one of a larger number of hearings scheduled for a particular time. They should not require the presentation of testimony or evidence and should involve only a limited number of participants who can be identified prior to the hearing. Counsel wishing to appear by phone should contact Judge Grant's chambers' staff in order to determine whether a telephonic appearance will be permitted. (Counsel should remember to do this sufficiently in advance of the scheduled proceeding so that if the answer is "no" they can arrange to attend in person.) If a telephonic appearance will be permitted, the caller is expected to contact all other participants in the scheduled proceeding in order to advise them of that fact and to give them the opportunity to participate in the call, should they, too, wish to appear by phone. All participants choosing to appear by phone must then jointly initiate a call to chambers at 260-426-2455 at the appropriate date and time.

Individuals not actively participating in a particular hearing will sometimes ask if they can call in "just to listen" to what goes on. Unfortunately, these requests cannot be accommodated at the present time. The court does not offer a Podcast or similar live stream of its proceedings, and it is not feasible to identify, and then conveniently arrange for the participation of, all of the different individuals – attorneys, clients, interested non-litigants, creditors, or members of the public – who might want to listen to a particular hearing on the telephone, if the opportunity to do so were available. Anyone interested in learning what transpired at any hearing may obtain a transcript or an audio recording of the proceedings. Instructions for doing so may be found at: http://www.innb.uscourts.gov/pdfs/Procedures%20for%20Requesting%20Official%20Transcripts.pdf

3. What is the process for filing and considering fee applications?

Applications for fees and expenses to be paid from the bankruptcy estate are considered following a motion and notice of the opportunity to object thereto, in accordance with Local Bankruptcy Rule B-2002-2. Judge Grant has several published decisions addressing the expected content of a fee application and its supporting materials, as well as the responsibilities of the applicant and any objector in the fee process. A review of those decisions and the court's local rules should be sufficient to answer most procedural questions concerning the fee process.

Two decisions which discuss that process are:

Matter of Hunt's Health Care, 161 B.R. 971 (Bankr. N.D. Ind. 1993).
In re Williams, 368 B.R. 744 (Bankr. N.D. Ind. 2007).

4. How should an emergency motion or a request for some type of expedited treatment be brought to the court's attention?

The Federal Rules of Bankruptcy Procedure and the court's Local Rules require that creditors be given a certain amount of notice of an upcoming hearing or, if no hearing is required, the court's consideration of a particular request for relief. They also often authorize the court to shorten those notice periods, for cause. If counsel wants the court to consider scheduling a particular motion for an emergency hearing or to shorten the notice to creditors otherwise required, a separate motion for an emergency hearing or to shorten the notice period should be filed at the same time as the motion or application which counsel wants considered on an expedited basis. The motion should state both the cause for the expedited treatment and the type of expedited treatment sought, with particularity. Once the motion has been filed counsel should contact either the clerk's office or a member of the chambers' staff to advise them of the motion's filing and ask that it be brought to the Judge's attention. Counsel should remember that such requests – either an expedited hearing or a shortened notice period – represent an unusual departure from the procedures otherwise required and, while many are granted, many are also denied. For further information counsel may want to review the following decisions:

In re Fort Wayne Associates L.P., 1998 Bankr. LEXIS 1695, 1998 WL 928419 (Bankr. N.D. Ind. 1998).
In re Minton, 2006 WL 533352 (Bankr. N.D. Ind. 2006) (explaining the wisdom and/or the reasons for seeking expedited treatment through a separate motion).

5. How does the court handle "first day motions" in Chapter 11 cases?

The court rarely, if ever, acts on substantive matters without some kind of notice to creditors, giving them an opportunity to be heard on particular issues or to object to particular relief. This is just as true for "first day motions" in Chapter 11 cases as it is for other types of relief. Accordingly, in Fort Wayne and Lafayette the court follows the same procedures for first day motions as it does for other types of requests seeking relief on an expedited basis or after shortened notice. For further information, counsel may want to review the following decisions:

In re River Terrace Estates, Inc., 2014 WL 4721660, 2014 Bankr. LEXIS 4044 (Bankr. N.D. Ind. 2014)
In re River Terrace Estates, Inc., 2014 WL 4716505, 2014 Bankr. LEXIS 4046 (Bankr. N.D. Ind. 2014)

6. Has the Judge ever issued a decision on . . . ?

Many of Judge Grant's decisions have been submitted to legal publishers such as West's Bankruptcy Reporter, BCD, Lexis, and Westlaw for publication. West and Lexis have also, of their own initiative and for reasons that are not at all apparent, chosen to electronically publish some decisions or orders that have not been submitted to them; many of these may be of little value. See e.g., Matter of Eisaman Real Estate, Inc., 2007 WL 4893510 (Bankr. N.D. Ind. 2007), In re Brown, 2008 Bankr. LEXIS 2099 (Bankr. N.D. Ind 2008). In addition to the decisions which are available through various legal publishers, in compliance with the E-Government Act of 2002, copies of Judge Grant's decisions, issued on or after April 15, 2005, are available on the

court's website in a text searchable format at http://www.innb.uscourts.gov/opinions/. If you are wondering whether the Judge has issued a decision on a particular issue and have researched these databases without success the answer is probably no.

7. What should I include in a pretrial order?

Local Bankruptcy Rule B-7016-1(c) specifies the contents of a pretrial order and that rule should be consulted. Counsel should be mindful that the preparation and submission of such a document is usually a joint endeavor and the court in Fort Wayne and Lafayette expects pretrial orders to be submitted jointly by all participants in the litigation. Furthermore, a pretrial order should be completely self-contained and should not incorporate by reference information contained in other documents filed in the case or direct the reader to review other documents for additional information. In broad terms, a pretrial order which satisfies the requirements of the local rule should give the reader a relatively clear understanding of the parties' respective positions in the litigation, the evidence each side expects to present, what they agree upon, what they are fighting about, what they will be fighting with, and how much time the court should allow for trial. For further information, counsel may want to review the following decisions:

Boyer v. Simon, 2009 Bankr. LEXIS 5627 (Bankr. N.D. Ind. 2009)
In re McGee, 2010 WL 9463258, 2010 Bankr. LEXIS 6434 (Bankr. N.D. Ind. 2010)
Ford v. Taylor, 2012 WL 7996897, 2012 Bankr. LEXIS 6089 (Bankr. N.D. Ind. 2012).

8. What was wrong with my notice?

The court is willing to consider many matters without holding a hearing following notice to creditors of the opportunity to object thereto. Local Bankruptcy Rule B-2002-2(a) specifies which requests for relief fall into this category and B-2002-2(c) specifies the content of the notice. The local rule also has a commentary which elaborates upon this aspect of the bankruptcy practice and the nature of the information that should be contained in any notice. Some notices do not satisfy the requirements of the local rule. In those situations the court will issue an order briefly explaining the nature of the deficiency. A review of the notice in light of the deficiency identified in the court's order and the requirements of the local rule, as well as its commentary, should make it reasonably obvious what needs to be improved. If, after having made this review, counsel still has questions concerning the nature of any deficiency, would like a further explanation, or believes the court to be in error, please do not call chambers to ask. Instead, an appropriate post-judgment motion should be filed. See, N.D. Ind. L.B.R. B-9023-1.

9. Can I talk to the Judge about a case?

No. Ex parte communications with the court are not permitted. (An ex parte communication occurs when only some of the participants in litigation contact the judge about a pending matter without appropriate notice to, permission from, or the inclusion of all other interested parties.) If you need assistance with procedural matters, the members of the clerk's office or the chambers' staff will be happy to assist you. Please remember, however, that such communications should be limited to procedural issues, such as arranging hearing dates or advising the court of emergency filings. The court's staff may not give legal advice, tell you what or whether you should file something in a particular situation, provide additional

explanation for the court's orders, continue a scheduled hearing, or extend a deadline. The best way to bring an issue to the court's attention is to file a motion or raise it during the course of a duly scheduled hearing.

10. How should I prepare exhibits for trial?

Pre-marking your exhibits before trial will avoid delaying the proceedings. The court does not particularly care how the exhibits are marked so long as they are readily identifiable. Counsel should confer with one another prior to trial and agree as to how the various exhibits will be marked, i.e., whether they will be called Joint exhibits, Plaintiff's exhibits, Defendant's exhibits, or Creditor's, Debtor's, Trustee's, Movant's, Objector's exhibits and the like, and who will use letters and who will use numbers to identify their exhibits. (The court cannot emphasize strongly enough the need for counsel to communicate effectively with one another throughout all phases of the pre-trial process.) At trial each side should provide the courtroom deputy with a list of all their exhibits, separate from the list contained in any pre-trial order, briefly describing each exhibit and indicating how it has been marked. All exhibits should be exchanged and reviewed (and if necessary discussed with opposing counsel) prior to trial so that, at trial, counsel can advise the court which exhibits may be received into evidence by agreement of the parties and without further proof. Exhibits containing multiple pages should be stapled, rather than paper clipped. Depending upon the number of exhibits being offered, placing them in a ring binder, with appropriate tabs, helps to keep the exhibits in order. The court often has old exhibit binders that were left by the parties or attorneys after the removal/disposal of their trial exhibits. These binders are not government property and may be available for your use. Of course, it is always helpful if there are sufficient copies of each exhibit so that all participants – all counsel, the witness, and the court – can have a copy available for their use during trial.

Other questions concerning exhibits, the availability of equipment, such as easels, televisions, video players, etc., in the courtroom, or the availability of binders should be directed to the courtroom deputy.

11. How can I withdraw my motion?

Rule 41 of the Federal Rules of Civil Procedure applies to both adversary proceedings and contested matters. See, Fed. R. Bankr. P. Rule 9014(c). Once a request for relief (whether a complaint, a motion, an application, etc.) has been responded to, it may not be dismissed or withdrawn unilaterally. After a response has been filed dismissal or withdrawal requires either the consent of the opposing party or an order from the court. If the opposing party consents, a joint notice of withdrawal will suffice. If, for whatever reason, consent cannot be obtained a motion is required in order to obtain an order from the court. Local Bankruptcy Rule B-7007-1(a) requires such a motion to be accompanied by a separate brief in support thereof and gives the opposing party thirty days to respond. If a motion to withdraw or dismiss a particular request is not filed until shortly before a scheduled hearing, the deadline for a response will not expire (and the court will not be able to rule) until after the date of the hearing. In that event, the hearing will go forward as scheduled and counsel should plan on attending. See, Question 1. The court applies these same principles to a request to withdraw an objection which has prompted the court to schedule a hearing on a particular motion. See e.g., N.D. Ind. L.B.R. B-2002(a). As a result, there is a great benefit in counsel effectively communicating with one another in this as well as all other aspects of the litigation process.